

**MAINE DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
AGRICULTURAL WATER SOURCE DEVELOPMENT  
COST SHARE PROGRAM  
REQUEST FOR PROPOSALS**

**Authority:** The Maine Department of Agriculture, Food and Rural Resources, pursuant to Private and Special Law PL 2005, Chapter 462, established a cost share program for development of environmentally sound water sources to help avoid drought damage to agricultural crops in Maine.

**Purpose:** The current cost share program was created to assist farmers to mitigate drought risk while minimizing the potential impacts to Maine's environment. The goal is the long-term maintenance of profitable farms. This goal will be achieved through the development of alternative water sources which include dug ponds, drilled wells and impoundments in compliance with environmentally sound construction practices.

**Eligibility:** Any Maine farm business, large or small, that needs to develop environmentally sound water sources to irrigate crops and minimize drought damage is eligible to apply to the program. A farm business is a business that buys and sells agricultural crops and livestock, with a minimum of over \$5,000 in gross receipts in any one year. Groups of farmers who will be sourcing water from the same constructed source may apply separately. Only one project per farm will be eligible for funding. If the dollar value of all grants received exceed the funds available, priority will be given to applicants who have not received a grant in the past through this program.

**Program Benefits and Use of Funds:** The program will provide up to 75% of the cost of construction of a new or expanded water source or up to \$80,000 per project, whichever is less. Funds can be used for building ponds, drilling or digging wells in association with construction of the structures. The cost of the pump for wells or ponds can be included as part of the project cost. Funds may also be used to provide hydrants, and the distribution pipe from the source to the hydrants so long as the distribution pipe will allow the farm to expand to new acreage to be irrigated.

**Restrictions on Use of Funds:** Funds cannot be used for irrigation delivery equipment and supplies, or solely for costs of permitting and engineering design. The costs for permitting and engineering design may be included as a part of the applicants share of the total cost of the project. Funds may not be used for test wells. However, the costs of test wells may be included as part of the applicants share of the total cost of the project.

**Form of Contract:** The successful bidder will be expected to enter into a Standard State of Maine Agreement to Purchases Services (BP54), a copy of which is attached to this Request For Proposals. Submission of a proposal in response to this RFP will be understood as the bidder's acceptance of the standard contract's terms and conditions. **Funds will be dispersed on the basis of invoices for work accomplished.**

**Where to get applications:** Copies of applications can be obtained from: Maine Department of Agriculture, Food and Rural Resources, C/O John Harker, 28 State House Station, Augusta, Maine, 04333 or email [John.Harker@maine.gov](mailto:John.Harker@maine.gov) or call 207-287-7620. The application can also be found on the web for download at <http://www.maine.gov/agriculture/mpd/business/grantsandloans/>

**DEADLINE AND SUBMISSION FOR PROPOSALS:** 5 copies of the proposal must be sealed in one envelope and clearly marked with the bidder's return address and the notation: "Proposal: Agricultural Water Source Development Cost Share Grant Program" and delivered to the Division of Purchases, Burton M. Cross Building - 4th Floor, 111 Sewall Street, 9 State House Station, Augusta, ME 04333-0009 no later than 2:00 p.m. local time on **Thursday, September 14th, 2006** at which time and place they will be opened. Please note that only proposals actually received and date stamped at the Division of Purchases at, or prior to, the stated time will be considered; bidders submitting proposals by mail are responsible for allowing adequate time for delivery. Proposals received after the 2:00 p.m. deadline will be rejected, without exception.

We encourage any farmer interested in applying for a grant to contact John Harker, Irrigation Grants Manager in order to seek assistance in filling out the application, developing farm water management plans and to seek information regarding permitting requirements. The Department can supply copies of sample applications, water budget templates, fact sheet on permitting processes and resource contacts for state or federal agencies that might be able to assist the applicant.

**APPLICATION FOR  
MAINE DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
AGRICULTURAL WATER SOURCE DEVELOPMENT  
COST SHARE PROGRAM**

The following information must be provided as part of the application in order for the application to be deemed complete for review. **If any information is missing, the application will not be reviewed. All attachments must be included and labeled as "attachment 1, etc".**

**1. NAME OF APPLICANT:** \_\_\_\_\_

**2. FARM NAME:** \_\_\_\_\_

**3. ADDRESS OF APPLICANT:**

P.O. Box \_\_\_\_\_ Street \_\_\_\_\_

Town \_\_\_\_\_ Zip Code \_\_\_\_\_ County \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Email: \_\_\_\_\_

Company Federal EIN or Social Security Number \_\_\_\_\_

**4. TYPE OF WATER SOURCE TO BE DEVELOPED**

\_\_\_ Dug Pond(no dike), or \_\_\_ Expansion of existing pond \_\_\_ Drilled Well \_\_\_ Dug Well  
\_\_\_ Dammed Stream, Brook or Flowage Impoundment or \_\_\_ Expansion \_\_\_ Underground distribution  
pipe to expand acreage irrigated.

**5. ESTIMATED TOTAL COST OF CONSTRUCTION** \$ \_\_\_\_\_

(Attach itemized cost estimates as **attachment 5**)

**6. AMOUNT OF FUNDS REQUESTED** \$ \_\_\_\_\_

(Up to 75% of total cost or \$80,000, whichever is less)

**7. AMOUNT OF FUNDS TO BE  
PROVIDED BY THE APPLICANT** \$ \_\_\_\_\_

## 8. WATER BUDGET INFORMATION

We need to know how much water you need, to make sure it meets the size of the water source. Please provide the following water use information. If you do not know how to develop a water budget, or would like assistance with the aid of computer models, please contact the Maine Department of Agriculture Irrigation Program Manager. If you have a water management plan, please note on what page of the plan we can find the information below.

A. Describe current irrigation practices, equipment and timings:

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B. Describe proposed irrigation practices, equipment and timings:

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C. Description of water delivery system(s) to be used with new source:

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D. Conservation methods currently used, or to be used to minimize water use:

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E. In what months will you need to irrigate? \_\_\_\_\_

F. The total number of crop acres/greenhouse space that the new source will irrigate? \_\_\_\_\_

G. Number of irrigation applications needed per season? \_\_\_\_\_.

H. How much water will these total acres need per application (in gallons or inches of water or acre-feet)? \_\_\_\_\_.

I. The total estimated annual irrigation water used (multiply E and F). \_\_\_\_\_

## 9. WATER SOURCE INFORMATION

The following information is needed to make sure the size of the water source meets the demand for water. Also, we need to know if you have exhausted other, less costly or environmentally sensitive solutions, that the site is suitable for a pond, and that any necessary permits are obtained or in process.

A. **If drilling a new well, please provide the following information here:**

Diameter of well \_\_\_\_\_ Estimated /Potential depth of well \_\_\_\_\_.

Hoped for/Anticipated flow rate of well \_\_\_\_\_.

**B. If building a new pond or expanding an existing pond**

1. Size of pond (length x width x depth) \_\_\_\_\_
2. Storage capacity (gallons or acre-feet) \_\_\_\_\_
3. For dug ponds, soil type to be altered, based on an on-site investigation. \_\_\_\_\_
4. If applicable, area of wetland to be altered, if any \_\_\_\_\_ including large excavation, filling or flooding. Note: if wetlands are to be altered, local, state and federal regulatory agencies must be contacted and permits or letters of exemption obtained. See attachment 2.
5. Source of recharge: \_\_\_Stream \_\_\_Brook \_\_\_Groundwater \_\_\_Springs\_\_\_ Surface Runoff \_\_\_  
Other \_\_\_\_\_
6. If recharge is from a stream or brook, detail the amount of water to be withdrawn and when it will be withdrawn  
\_\_\_\_\_  
\_\_\_\_\_.

Note: If building an impoundment, include a design by an engineer or other qualified person. If building a pond with embankments above existing grade, you must have a design meeting USDA-NRCS technical standards or equivalent for berm development.

**C. List other possible alternative sources and why you did not choose those sources over the proposed source:**

Rejected Alternative Source 1:

Reason for  
rejection: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Rejected Alternative Source 2:

Reason for  
rejection: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Rejected Alternative Source 3:

Reason for  
rejection: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attach additional sheets if needed.

**10. Please check which type of irrigation applies to your project:**

- \_\_\_ If you are proposing to irrigate existing acreage previously irrigated
- \_\_\_ If you are proposing to irrigate existing acreage not previously irrigated
- \_\_\_ If you are providing newly established irrigation to new acreage

**11. Will development of the new water source reduce direct withdrawal from a river, stream, brook, pond or lake? Please Explain:**


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**12. CROP(S) TO BE IRRIGATED.** We need to know if you have suffered drought losses in the past, and the value of the crop(s) to be irrigated from the new source. Describe crop or crops to be irrigated from the source, acres of each and **2005** market value of each (Explain on what you based the market price). Calculate loss due to drought, if known. If not known, estimates are acceptable. For expansions into new acreage to be used for crops, project crop acreage and value, ignore drought damage estimates.

Crop \_\_\_\_\_ Acreage \_\_\_\_\_

Projected Yield \_\_\_\_\_ Market Price \_\_\_\_\_ Total Value \_\_\_\_\_

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Crop \_\_\_\_\_ Acreage \_\_\_\_\_

Projected Yield \_\_\_\_\_ Market Price \_\_\_\_\_ Total Value \_\_\_\_\_

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Crop \_\_\_\_\_ Acreage \_\_\_\_\_

Projected Yield \_\_\_\_\_ Market Price \_\_\_\_\_ Total Value \_\_\_\_\_

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Crop \_\_\_\_\_ Acreage \_\_\_\_\_

Projected Yield \_\_\_\_\_ Market Price \_\_\_\_\_ Total Value \_\_\_\_\_

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Crop \_\_\_\_\_ Acreage \_\_\_\_\_

Projected Yield \_\_\_\_\_ Market Price \_\_\_\_\_ Total Value \_\_\_\_\_

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13. If you had past drought losses on your crop acreage, and can estimate them, please write the total of the losses here. If you submitted for a crop loss in the past with FSA, Attach the crop loss form, if available. Please submit a narrative explaining the type of drought damage you have received in the past.

Estimate past years drought loss if applicable 2005 \$ \_\_\_\_\_ 2004 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_ 2002 \$ \_\_\_\_\_

Total (add losses for all years 2002 through 2004) \$ \_\_\_\_\_

14. When submitting a response to this RFP, please answer the following questions.

1. Will any of the services described in the scope of work be performed outside of the United States of America?

☐ Yes ☐ No

If the answer was "Yes," show what country(ies) below and continue with question 2.

2. If you responded "Yes" above, who will perform any of the services described in the scope of work?

☐ Citizens of the USA living abroad

☐ Foreign nationals

3. In what US state or foreign country is your firm incorporated?

**Attachments: Please make sure you have provided the following as attachments and mark them "Attachment 1,2,3 etc".**

**Attachment 1** - Provide us a map that shows your property, the location of the well or pond to be developed and directions to the site. A USGS Topographic Map or USDA-Conservation plan map would be ideal. Add the boundaries of the farm unit to be served by the source with the pond/well/impoundment site clearly marked and labeled.

**Attachment 2-** Include copies of all required permits as attachment 2, if you have received them as of the date of this submittal. If you do not have a permit yet, submit a letter from the required agency (DEP, LURC and/or Army Corps of Engineers) stating whether a permit is needed. If approved, the grant will be contingent on receiving all applicable permits. If they say you do not need a permit, then please have a written letter from the official tell us why you do not need a permit. Include these letters/ correspondences as attachment 2.

If you need help identifying who to talk to, contact the Maine Department of Agriculture.

**Attachment 3:** We need to know that the property on which the pond or well will be developed is under your control. Please attach last years paid tax bill from the town ; or aproperty deed (with book and page number)of ownership; or a lease agreement; or other legal document establishing that you have title, right to, or interest in, the property proposed for pond development. If the land to be developed is leased land, then you must show a 10 year lease with a requirement in the lease for reimbursement of grant funds if the lease is broken (**See state contract, section 27**). Contact 287-7620.

**Attachment 4:** We need to know that you have adequate funds to pay for the 25% of your commitment to the project. If you are going to self-fund the project or you are going to do some of the work yourself, please have a verified bank letter noting that you have sufficient funds available. If a bank is going to loan the funds, please attach a letter from your financial institution on the availability of funds for meeting your share of the construction cost.

**Attachment 5:** Please provide a detailed cost estimate. The estimates must be accurate, and either written estimates from contractors or if you are going to do part or all of the construction yourself, provide a SEPARATE, itemized cost estimate on your own letterhead. Use generally accepted construction cost rates for labor, equipment and supplies and note where you attained the information on those rates. PLEASE MAKE A SUMMARY PAGE OF ALL COST ESTIMATES AND THEN ATTACH THOSE ESTIMATES TO THE SUMMARY PAGE.

**Attachment 6:** if an impoundment is proposed, show engineering design for structural integrity of the impoundment and the emergency spillway and proper erosion and sediment control measures to be established. If you do not have a design at this point, please provide a signed letter of agreement with an engineering firm or the Natural Resources Conservation Service with whom you will contract the work. Include their cost estimate to do the design and a statement of the feasibility of the project. Funding will be contingent on submission of a design that meets USDA-NRCS standards and specifications or equivalent.

THIS ENDS THE APPLICATION. MAKE SURE YOU MAKE **5 COPIES** OF THE APPLICATION AND  
SEND IT BEFORE THE DUE DATE TO:

**Division of Purchases, Burton M. Cross Building** - 4th Floor, State House Station 9, Augusta, ME  
**04333-0009.**

IF YOU NEED ASSISTANCE WITH THE APPLICATION, PLEASE CALL

**John Harker at 287-7620 or email [john.harker@maine.gov](mailto:john.harker@maine.gov).**



**THE FOLLOWING INFORMATION IS FOR THE APPLICANT'S USE ONLY AND DOES NOT  
HAVE TO BE INCLUDED IN THE FINAL APPLICATION TO THE DEPARTMENT**

**The Department will utilize the following criteria and point system to evaluate proposals**

**PROPOSAL SCORING SHEET**

**Budgets and Cost of Construction up to 25 points**

If applicant has all the funds necessary to finance the project; and 15 points

If applicant has clearly itemized all costs 10 points

**Engineering Specifications up to 10 points**

If applicant has all the design work completed and submitted or  
does not need an engineering design; or 10 points

If applicant has a written agreement to complete the engineering design 5 points

**Type of Source up to 10 points**

If applicant is replacing a river, stream or brook withdrawal for environmental  
reasons, or 10 points

If applicant is avoiding other environmental risk or requirement to not use a source 5 points

**Permitting up to 10 points**

If applicant has all applicable permits or does not need permits, or 10 points

If applicant must still get permits 5 points

**Drought Risk up to 20 points**

If applicant clearly has prior economic damage needing risk reduction, or 20 points

If applicant has the potential for economic damage needing risk reduction, or 15 points

Applicant does not indicate any economic damage needing risk reduction 5 points

**Conservation Practices up to 10 points**

If applicant demonstrated good irrigation conservation practices, and 5 points

If applicant has demonstrated development of an efficient irrigation system, based on the industry standard for the  
commodity in question. 5 points

**Existing Versus New Irrigation up to 15 points**

If applicant is proposing to irrigate existing acreage previously irrigated, or 15 points

If applicant is proposing to irrigate existing acreage NOT previously irrigated, or 10 points

If applicant is providing newly established irrigation to new acreage not currently farmed 5 points

**THE FOLLOWING INFORMATION IS A SAMPLE STATE CONTRACT THAT WOULD NEED TO BE SIGNED BY THE APPLICANT IF AWARDED THE GRANT. THESE PAGES ARE FOR THE APPLICANT'S INFORMATION ONLY AND DO NOT NEED TO BE A PART OF THE FINAL APPLICATION.**

Page 1 of \_\_\_\_\_

Agreement No: \_\_\_\_\_

STATE OF MAINE  
DEPARTMENT OF \_\_\_\_\_  
Agreement to Purchase Services

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between the State of Maine, \_\_\_\_\_, hereinafter called "Department," and \_\_\_\_\_, located at \_\_\_\_\_, telephone number \_\_\_\_\_, hereinafter called "Provider", for the period of \_\_\_\_\_ to \_\_\_\_\_.

The Employer Identification Number of the Provider is \_\_\_\_\_

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C – Exceptions
- Rider G – Provision of Contract Services by Foreign Nationals or Work Performed Abroad

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in \_\_\_\_\_ original copies.

**DEPARTMENT OF** \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Department Representative  
and  
\_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Provider Representative

Total Agreement Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
State Controller

Approved: \_\_\_\_\_  
Chair, State Purchases Review Committee

## MFASIS ACCOUNT CODING

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RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

The project is for the construction of a water source for the farm in question. The applicant has the details of the costs and procedures for construction of the source. Please see attached application.

RIDER B METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ \_\_\_\_\_

2. **INVOICES AND PAYMENTS** \_\_\_\_\_ The Department will pay the provider as follows:

The Department will pay the provider on the basis of work performed and invoices submitted. Funds will be available after July 1, 2006.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: John Harker  
Title: Agricultural Resource Manager  
Address: 28 State House Station, Augusta, ME 04333

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

- a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

- b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability or sexual orientation.
- c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any



person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

## RIDER C EXCEPTIONS

**FARMLAND SALE AND REPAYMENT OF GRANT** If, for any reason, the land upon which the new water source is developed is sold within the next 10 years, the provider will reimburse the state for the state share of the cost of development of the water source. The repayment will be reduced for each year of the ten years for which the water source is in use for agriculture prior to the sale on a depreciation scale as follows:

<b><u>First year</u></b>	<b><u>100% of funds to be reimbursed</u></b>
<b><u>Second year</u></b>	<b><u>90% “</u></b>
<b><u>Third year</u></b>	<b><u>80% “</u></b>
<b><u>Forth year</u></b>	<b><u>70% “</u></b>
<b><u>Fifth year</u></b>	<b><u>60% “</u></b>
<b><u>Sixth year</u></b>	<b><u>50% “</u></b>
<b><u>Seventh year</u></b>	<b><u>40% “</u></b>
<b><u>Eighth year</u></b>	<b><u>30% “</u></b>
<b><u>Nineth year</u></b>	<b><u>20% “</u></b>
<b><u>Tenth year</u></b>	<b><u>10% “</u></b>

The provider must inform the Department within 60 days of the sale of the property, and funds must be reimbursed to the state at the closing of the sale of the property. If the property is to continue to be farmed and the water source used for agricultural purposes, the grant repayment obligation will be required of the new owner, and that requirement must be included in the purchase and sale agreement with the new owner.

**RIDER G****Provision of Contract Services by Foreign Nationals or Work Performed Abroad**

The Maine Legislature has asked the Division of Purchases<sup>1</sup> to determine the country where contracted services will be performed.

The following contract/amendment has been executed with the State of Maine.

1	Division of Purchases Contract Reference
< highlight & enter the Purchases File Number >	
2	Contractor Name
< highlight and enter the Name of the Contractor >	
3	Brief Contract Service Description
< highlight and enter a Brief Description of the Service Provided >	

So that we may comply with the Legislature's request, please provide responses to the following questions. To successfully complete the questionnaire be alert for follow-up entries if certain responses are made. Please show your responses in the spaces provided. You may mark any box with ☐ using your computer, keyboard & mouse. Highlight the box (☐) with your cursor and type a lowercase "x." If additional entries are needed, type to the right of the mark (>) shown in questions 1 and 3.

**1. Will any of the services described in the contract's scope of work be performed outside of the United States of America?**

☐ ☐ No. *Go to Q.3.*

☐ ☐ Yes. *If "Yes," show in what country(ies) below and Continue w/Q.2 and Q3.*

>

**2. If you responded "Yes," above, who will perform any of the services described in the contract's scope of work?**

☐ ☐ Citizens of the USA living abroad. ☐ ☐ Foreign nationals.

**3. In what US state or foreign country is your firm incorporated?**

>

Name of the Person Submitting the Information	Voice Phone Number

Thank you for completing this information. You may send the completed form by email to the Division of Purchases [Jerry.Nault@maine.gov] or return it by telephone facsimile [207/287-6578] in addition to a response by regular post [9 State House Station, Augusta, ME 04333-0009].

**Notification of Changes to the Information**

A provision of the Resolve requires service providers to notify the Division of Purchases of any changes to this information. That notification may be sent to the address shown above and should reference the Purchases File Number.

<sup>1</sup> Resolve, Chapter 16, First Special Session-2005.